

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DEBBIE JOANN DEUEL

24410 Crenshaw Boulevard, #320

Torrance, CA 90505

Respiratory Care Practitioner License

No. 6532

Respondent.

Case No. R-1995

OAH No. L2005100709

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 28-29, 2005, in Los Angeles.

E.A. Jones, III, Deputy Attorney General, represented Complainant.

Respondent appeared and represented herself.

Oral and documentary evidence was received and argument made. The record was closed and the matter submitted at the conclusion of the hearing on December 29, 2005.

FACTUAL FINDINGS

Parties & Jurisdiction

1. On July 12, 1985, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License Number 6532 to Respondent. The license was in full force and effect at all times relevant, is currently inactive, and will expire on August 31, 2007, unless renewed.

2. Stephanie Nunez (Complainant) brought the Accusation solely in her official capacity as Executive Officer of the Board. The Accusation alleges that Respondent was convicted of two (2) substantially related crimes and that her ability to practice respiratory care is impaired due to mental illness. Respondent filed a Notice of Defense, which requested the hearing that ensued to present her defense to the charges of the Accusation.

Respondent's Convictions

3A. On July 15, 2004, in the Superior Court of California, County of Los Angeles, case number YA058454, Respondent was convicted, by her plea of guilty, of two (2) counts of violating Vehicle Code section 2800.2, subdivision (a) (eluding/fleeing from a pursuing officer), both felonies.

3B. Imposition of sentence was suspended and Respondent was placed on formal probation for five (5) years, under various terms and conditions, including that she serve 365 days in the county jail, with credit for 99 days (66 days actually served) and the remainder of the time to be served at Harbor View Center or at an approved outpatient program; pay a restitution fine of \$200.00; and cooperate with her probation officer in a plan for psychological counseling. Respondent served the balance of her jail time in an adult residential facility and she timely paid the fine. As described in more detail below, she has regularly received psychological counseling and is in compliance with all conditions of her probation, which is scheduled to expire in July 2009.

3C. The facts and circumstances surrounding this offense are as follows. On May 10, 2004, Respondent was involved in a police pursuit. Officers of the Torrance Police Department initially observed that Respondent drove her vehicle erratically at a high rate of speed, failed to stop at a stop sign and then entered a parking garage. One officer followed Respondent to the second floor of the parking garage. Respondent intentionally backed up into the officer's vehicle and sped off. She then veered off in front of another police vehicle, which was positioned to stop her, and exited the parking garage. The officers pursued Respondent, activating their overhead lights and siren. Respondent failed to yield to them. Respondent then drove erratically around a vehicle and made an illegal turn. She then went through a posted stop sign and another red light. Respondent was stopped when another officer performed a Pursuit Intervention Technique (P.I.T.) on her vehicle. Respondent refused to exit her vehicle as ordered, so she was pulled out of her vehicle and handcuffed. One of the officers realized that he had been in another pursuit with Respondent earlier that day. On that earlier occasion, the officer had attempted to conduct a traffic stop, but Respondent fled from him, driving unsafely through residential areas and by schools.

4A. On January 7, 2005, in the Superior Court of California, County of San Bernardino, case number MWV078779, Respondent was convicted, by her plea of guilty, of violating Penal Code section 602, subdivision (m) (trespass by driving on private property), an infraction. Respondent was ordered to, and did, pay a \$950.00 fine.

4B. The facts and circumstances surrounding this offense are as follows. On December 27, 2002, Respondent telephoned a friend, but was told that the friend did not want to speak to her. Respondent stated she was going to come to her house anyway. She arrived at 2:11 p.m. and was asked to leave, but she refused. Sheriff's deputies responded, told Respondent to leave and advised her that that she would be subject to trespassing charges if she returned. Later in the day, Respondent's van was observed in the friend's driveway. The Sheriff's Department was contacted. When a deputy arrived, he found

Respondent playing with dogs in the kitchen and talking on the telephone. Respondent stated that she was waiting for her friend to return; that she had returned to the friend's residence at about 5:00 p.m; that she sat in the driveway for a while; that she then heard a song on the radio that was her "cue" or indicator to go into the house; and that she entered the house through an unlocked front door. Respondent told the deputy she knew she was trespassing, but she refused to take no for an answer when her friend did not want to see her.

Other Relevant Events

5. On March 11, 2004, Respondent was involved in a hit-and-run vehicle incident. Respondent sideswiped another vehicle, causing minor damage. Respondent drove in a circle around the other vehicle numerous times, stopped, told the driver of the other vehicle "I'm sorry," and then fled the location without exchanging information. The other driver followed Respondent, called police and made a citizen's arrest when the police later apprehended Respondent. Respondent was taken into custody and booked. Although it is unclear whether Respondent was prosecuted for this event, there is no dispute that she was not convicted of any offense related to it.

6. From 2003 through 2004, Respondent was hospitalized three (3) different times for depression. Some or all of those hospitalizations were involuntary.

Competency Examination

7. On June 20, 2005, the Board served on Respondent an Order Compelling Psychiatric Examination. On July 8, 2005, psychiatrist Mohan Nair evaluated Respondent. Dr. Nair examined Respondent for approximately three and one-half (3.5) hours and reviewed pertinent documentation. He did not administer to Respondent any psychological tests because he believed she was too agitated and disturbed to be able to complete them.

8. Dr. Nair diagnosed Claimant with major depression with psychosis recurrent type, and stated that a bipolar disorder should also be ruled out. Dr. Nair concluded that Respondent should not engage in the practice of respiratory care, because she has a serious psychiatric disorder that is disabling, for the following reasons:

A. Respondent is not able to relate to others in a work setting. She will not respond to supervision appropriately and is not able to supervise and manage others. Her attention and concentration are impaired. Her ability to perform complex mental tasks is impaired. She is not able to perform under the stress of a workload or in critical situations. She is not able to work on a daily basis or complete a workday without interruption from psychiatric symptoms.

B. There is a high likelihood that as a result of Respondent's mental state, which includes depression, she will not comprehend what is told to her by other people, including patients and those that request her services. A level of distraction will make it difficult for her to monitor what is going on with patients and to read instruments.

Respondent's Background and Rehabilitation

9. Respondent is a 52 year-old woman, who is separated from her husband and has three (3) children. She has no prior disciplinary history with the Board. She worked part-time as a respiratory care practitioner from 1987 until March 2003, when she voluntarily resigned from her job due to her personal problems. No evidence was presented of problems at work. Respondent has not since used her license; she voluntarily went on inactive status during her last license renewal. She disclosed the convictions during her last license renewal. Before the events described above, Respondent had no criminal record.

10. Respondent's convictions and the other events described above were the result of her downward spiral into major depression. Her problems began in 2001, when one of her sons was diagnosed with attention deficit/hyperactive disorder (ADHD). Respondent was also impacted by the events of September 11, 2001, in part, because her husband is a fireman. Her son's problems worsened through October 2002, when he ran away from home. Respondent also became estranged from a very good friend. By late 2002, she began acting strangely, as evidenced by the trespass incident, which involved her estranged friend. By March 2003, her husband of many years separated from her and later started divorce proceedings (which continue). Respondent became estranged from her children. She resigned from her job. Her depression became worse and her behavior deteriorated, as the other above-described events evidence. She was not being treated at that time by a mental health professional. Instead, she isolated herself, living with and caring for her elderly and ailing mother. Respondent bottomed out in May 2004, when she led police on the above-described vehicular pursuits.

11. Respondent's rehabilitation began with her arrest in May 2004 related to the police pursuits. She began receiving psychological counseling while incarcerated, which continued while she served the rest of her custody time in the residential facility. Respondent has regularly taken anti-depressant medications and has done well on them. She received regular counseling from January through August of 2005 by Lisa Richards, L.C.S.W.; she has received regular psychotherapy thereafter from Andrew F. Blew, Ph.D. She is receiving treatment for her depression from Daniel D. Anderson, M.D., who is also prescribing the anti-depressant medications. As described above, she is in compliance with her probation. She recently had her driver license reinstated. She has stayed current on her continuing education requirements. She still lives with and takes care of her ailing mother. She has renewed relations with her son Ryan, who testified at the hearing of this matter and deeply cares about his mother. Respondent has had no subsequent contacts with law enforcement.

12. Respondent established that she is now making substantial progress toward recovering from her major depression and her prior loss of functioning, as follows:

A. Respondent's good behavior and regular treatment for her depression described above.

B. Two letters from Respondent's treating psychiatrist, Dr. Anderson, indicate Respondent's situation is stable and that her depression is in remission. Dr. Anderson concludes Respondent is ready to resume work. It is not apparent from that statement that he means Respondent can resume her licensed activities. His statement is sufficiently vague as to indicate he simply means she can resume work in general, not licensed work in particular.

C. Respondent's son Ryan credibly testified that he has regularly seen his mother the past few years and has not observed her engage in the type of strange behavior that precipitated the Board's action in this matter.

D. Respondent made a very good appearance at the hearing. She was neatly dressed and behaved rationally and appropriately at all times. She performed well representing herself. She was responsive to questions, maintained good eye contact at all times, and was very respectful of the proceedings and the Board's position in this matter. She was respectful as she questioned an obviously adverse witness, Dr. Nair, and she asked him relevant questions. She admitted to her above-described misconduct and appeared candid while testifying.

E. Many of the following factual underpinnings of Dr. Nair's conclusions regarding Respondent's competence are not currently present. Respondent's observed appearance and performance during the two (2) days of hearings in this matter was better than the description Dr. Nair gave of her performance during his psychiatric examination in July 2005. Dr. Nair also admitted as much when he testified. Respondent did not exhibit the agitation and disturbance during the hearing that Dr. Nair observed. She was not observed responding to hallucinations or engaging in other strange behavior. She shows insight to her past misconduct. She is able to drive her car without incident. She is able to care for herself such as to make a good physical appearance at the hearing. She is cooperating with the care and treatment of her psychoanalyst and psychiatrist, and she is regularly taking her medications.

F. Dr. Nair stated in his examination report that there "is significant potential for rehabilitation if [Respondent] is to receive the appropriate and intensive levels of care." Dr. Nair believes that Respondent's age and history are consistent with the potential for her to become completely well and return to her previous level of functioning. Respondent has continued to receive appropriate care and is making great improvement.

13. It was not established that Respondent's rehabilitation is such that her using her license without serious restrictions and limitations would protect the public. For example, Dr. Nair credibly opined that her full recovery has not yet occurred, despite her favorable progress and good performance at the hearing, given Respondent's longstanding history of depression and her seriously impaired presentation to him in July 2005. No conflicting evidence was presented; the letters from Drs. Anderson and Blew are insufficient for that purpose. Respondent herself testified that she is not yet ready to resume practicing, and her son echoed that sentiment when he testified.

14. According to Dr. Nair, Respondent should not be allowed to practice, after sufficient recovery, without the following types of license restrictions: a five (5) year long diversion program, such as those directed toward physicians and other healthcare providers; group therapy with peers; monitoring for whether Respondent is regularly taking her prescribed medications, including Depakote; and regular reports from Respondent's therapist and psychiatrist.

Costs

15. Complainant established the following costs were incurred in the investigation and prosecution of this case:

Expert witness (Dr. Nair) examination fee	\$ 4,837.50
Legal services of Deputy Attorney General	\$ 870.75
Legal services of paralegal	\$ 2,508.00
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Total Costs Requested	\$ 8,216.25

16. A finding relative to the case of *Zuckerman vs. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 is made as follows.¹ A significant amount of the Board's requested costs relate solely to the mental impairment cause for discipline, i.e. Dr. Nair's examination fee. Most of the legal services are charges by a paralegal who billed 27.50 hours to this case. Complainant's evidence primarily consisted of the testimony of one witness (Dr. Nair), the witness's report, and easily obtainable court and police records. It is therefore not apparent that this case required that amount of paralegal work. Respondent has very limited income and cannot afford to pay the amount of costs requested, especially if she has to also pay probation monitoring costs. She is not currently working. She is caring for her mother. She is involved in divorce proceedings with her husband. She lacks full medical coverage and therefore must pay for some of her mental health treatment and medications.

LEGAL CONCLUSIONS

Cause for Discipline

1. FIRST CAUSE FOR DISCIPLINE (Mental Impairment Affecting Ability to Practice). Respondent is subject to disciplinary action under Business and Professions Code section 822,² because her ability to practice respiratory care has been, and is, impaired due to mental illness. (Factual Findings 3-14.)

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¹ See Legal Conclusion 4C below.

² All further statutory references are to the Business and Professions Code, unless otherwise specified.

2. SECOND CAUSE FOR DISCIPLINE (Conviction of a Crime). Respondent is subject to disciplinary action under sections 3750, subdivision (d), 3752, and 490, in that she was twice convicted of crimes substantially related to the qualifications, functions or duties of a respiratory care practitioner. According to California Code of Regulations, title 16, section 1399.370, a crime is considered to substantially relate to licensed activity “it if evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license” Both of Respondent’s convictions were the result of her on-going mental illness, which impaired her judgment, and allowed her to willingly disobey direct orders from peace officers and disregard the safety of herself and others. That conduct demonstrates a potential unfitness to perform licensed functions and thus both convictions substantially relate to licensed activity. (Factual Findings 3-10.)

Disposition

3A. Reference is made to the Board’s Disciplinary Guidelines (effective March 2002), which are incorporated by reference in California Code of Regulations, title 16, section 1399.374. None of the specified aggravating factors are apparent in this case. The following specified mitigating factors are present: (1) Respondent recognizes her misconduct and mental impairment and has demonstrated corrective action to prevent recurrence; (2) Respondent was forthcoming by disclosing her convictions to the Board when she last renewed her license; and (4) before the events in question, Respondent had no prior criminal or disciplinary history.

3B. With regard to Respondent’s two convictions, reference is also made to the Board’s regulation regarding rehabilitation, contained at California Code of Regulations, title 16, section 1399.372. The acts supporting discipline in this case are deemed moderate, mainly because no patient was involved and Respondent’s misconduct was in large part due to her mental impairment (subd. (a)). Respondent had no prior criminal record (subd. (b)). It has been almost two (2) years since Respondent last engaged in misconduct (subd. (c)). Respondent fully complied with the term of her second conviction and has been in full compliance with the terms of her probation from the first conviction (subd. (d)). No evidence was presented of any subsequent misconduct (subd. (e)). Respondent submitted other evidence of rehabilitation, including regular and successful psychotherapy and psychiatric treatment for her mental illness (subd. (f)). Under the circumstances, Respondent established sufficient evidence of rehabilitation.

3C. As the misconduct that supports discipline in this matter is primarily related to Respondent’s mental impairment, the disposition of her discipline is analyzed mainly with respect to that theory, as opposed to the two convictions. With regard to mental impairment, the pertinent statutes and regulations indicate the disposition is a matter of discretion. For example, Business and Professions Code section 822 states that when a licensee is determined to be mentally impaired, the licensing agency may revoke the license, suspend the licensee, place him/her on probation, or take any other action which the agency “in its discretion deems proper.” The Disciplinary Guidelines do not provide a suggested range of discipline for a licensee found to be mentally impaired. An analogy can be made to the

suggested discipline for a violation of section 3750.5, regarding the illegal or dangerous use of controlled substances, because such cases commonly present a licensee impaired by addiction. The range of discipline for such a violation is a minimum of two years probation with terms and a maximum of revocation. No reason is apparent to treat a person afflicted by a mental illness differently than one addicted to a dangerous drug or controlled substance.

3D. In this case, a disposition of substantial probation with significant conditions intended to protect the public is an appropriate exercise of discretion, as opposed to outright revocation. Mitigating facts are present, but not aggravating facts. Respondent established sufficient rehabilitation. Respondent's depression has vastly improved and her treating psychiatrist believes she is ready to resume work in general. While Dr. Nair believed in July 2005 that Respondent was incapable of safely performing licensed activity, it was not clearly and convincingly established that his opinion is equally applicable at present. Respondent is a much different person now than she was last year. Since many of the underpinnings of Dr. Nair's conclusion no longer appear to exist, the current validity of his opinion regarding Respondent's ability to safely practice is subject to question. However, the evidence indicates Respondent is not yet ready to resume licensed activity. Thus, a one (1) year suspension would provide her the additional time she needs to fully recover, assuming her continued appropriate treatment for her depression. Once her suspension is over, Respondent should be subject to another Board mental competence examination to confirm that she is indeed ready to resume practice. A psychiatrist or psychologist other than Dr. Nair should perform that exam, so as to bring into this case a fresh view of her state of mind. Failure to pass such a mental examination would obviously be a violation of her probation, and very likely could be grounds grave enough to revoke the probation and reinstate the stayed revocation. Respondent should also remain on a lengthy probation, with terms requiring her to continue her mental health treatment, be subject to supervision, etc. (Factual Findings 1-14.)

Costs Recovery

4A. Business and Professions Code section 3753.5, subdivision (a), allows the Board or an administrative law judge hearing a Board disciplinary matter to direct a practitioner "found to have committed a violation or violations of law to pay to the [B]oard a sum not to exceed the costs of the investigation and prosecution of the case." Section 3753.7 states that such costs may include attorney general or other prosecuting attorney and paralegal fees, expert witness fees, and other administrative, filing, and service fees. Section 3753.1, subdivision (a), provides that a disciplinary order containing probation may also include a requirement that the probationer pay the costs associated with monitoring the probation.

4B. With regard to section 3753.5, subdivision (a), it is not clear that this case, to a large extent, involves "a violation or violations of law . . .," in that discipline is mostly triggered due to Respondent's mental impairment, as opposed to affirmative misconduct in violation of the Board's governing statutes and regulations. Moreover, it was not established that all of the paralegal services were reasonable or necessary. No prima facie presumption

of reasonableness attaches to the paralegal fees, pursuant to section 125.3, subdivision (c), because Complainant did not provide a “certified copy of the actual costs . . .” incurred by the Board regarding those costs, as opposed to the expert witness fees in which a certified copy was provided. The declaration prepared by the prosecuting Deputy Attorney General regarding the legal fees charged to the Board is not a “certified copy of the actual costs,” as contemplated by section 125.3, subdivision (c).

4C. Also of relevance is the California Supreme Court case of *Zuckerman vs. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In that case, this state’s high court found that another licensing board’s cost recovery scheme passed constitutional muster. In so deciding, the Supreme Court outlined three factors that must exist in a valid cost recovery scheme. One factor is that a board must reduce or eliminate costs in a manner that will insure a licensee with a potentially meritorious defense or claim is not deterred from exercising his or her right to a hearing. With regard to that factor, the state high court described the following circumstances where costs should be reduced or eliminated: (1) when a licensee would be unfairly penalized by using the hearing process to dismiss some but not all charges or to reduce the severity of proposed discipline; (2) if a licensee will be financially unable to make later payments; and (3) when the involved board has conducted a disproportionately large investigation to prove a licensee has engaged in relatively innocuously misconduct. (*Id.* at p. 45.)

4D. In this case, application of the above legal concepts should result in a reduction of the Board’s cost recovery. The discipline imposed in this case for the most part does not flow from Respondent’s violation of the laws governing Board licensees, but mainly results from her mental impairment. Most of the costs sought in this case were generated by events for which Respondent is not entirely to blame. Most of the paralegal fees requested do not appear to be reasonable. With regard to the *Zuckerman* decision, Respondent is financially unable to make later cost recovery payments, especially if she must also fund probation monitoring costs. Ordering her to pay the entire cost recovery amount requested would almost immediately put her in jeopardy of not being able to comply with her probation in this matter, which would not be an equitable result. Because some of the discipline imposed in this case is the result of Respondent’s two criminal convictions, for which she must bear some responsibility, a cost recovery of \$1,000.00 would be reasonably related to the investigation and prosecution of such a matter and would thus be appropriate in this case. That award will allow the Board to recover all of the requested Deputy Attorney General legal fees and a small part of the paralegal fees requested. (Factual Findings 15-16.)

ORDER

The Respiratory Care Practitioner License Number 6532, issued to Respondent Debbie Joann Deuel, is revoked. However, the revocation is stayed, and Respondent is placed on FIVE (5) YEARS PROBATION, under the following terms and conditions:

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1. OBEY ALL LAWS

Respondent shall obey all laws, whether federal, state, or local. Respondent shall also obey all regulations governing the practice of respiratory care in California. Respondent shall notify the Board in writing within 14 days of any incident resulting in her arrest, or charges filed against, or a citation issued against, Respondent.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

Quarterly reports are due for each year of probation and the entire length of probation as follows: For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. PROBATION MONITORING PROGRAM

Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed. Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, she shall be required, instead to submit an explanation of why she is unable to submit the costs, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.

5. EMPLOYMENT REQUIREMENT

Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of two-thirds of her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each eight months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

The Board, in its discretion, may allow Respondent to work fewer hours per week, in response to such a request by Respondent which includes an explanation why such a reduction is reasonable and necessary.

6. NOTICE TO EMPLOYER

Respondent shall be required to inform her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Accusation in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry, Respondent shall make each hospital or establishment to which she is sent aware of the discipline imposed by this decision by providing her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Accusation in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide her physical residence address as well.

8. COST RECOVERY

Respondent shall pay to the Board the sum of \$1,000.00, which shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, she shall be required, instead to submit an explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of her responsibility to reimburse the Board for these costs.

9. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure.

Respondent shall notify the Board, in writing, within 14 days, upon her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

10. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to her license expiration date shall constitute a violation of probation.

11. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

12. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

13. WORK SCHEDULES

Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of her current work schedule at all times for each place of employment.

Failure to submit current work schedules on a continuous basis, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

14. BIOLOGICAL FLUID TESTING

Respondent, at her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board, for the purpose of determining if she is taking medications prescribed to her by her treating psychiatrist, but not for purposes of determining if she is consuming alcohol or other controlled substances. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.

At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples. If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

Failure to submit to testing or appear as requested by any Board representative for testing, as directed shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

15. SUPERVISOR QUARTERLY REPORTS

Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th. For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th. For the

period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th. For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.

16. RESTRICTION OF PRACTICE

Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions. Respondent is prohibited from working in home care unless it is under direct supervision and personal observation.

17. DIRECT SUPERVISION

During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he/she is functioning as a licensed respiratory care practitioner. The appropriate level of supervision must be approved by the Board prior to commencement of work.

18. SUSPENSION

As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of ONE (1) YEAR, beginning the effective date of this decision. Respondent may not resume respiratory practice using her license until after completion of the suspension and successfully passing the psychological examination ordered below.

19. PSYCHOLOGICAL EVALUATION

After 12 months of the effective date of this decision, and on a periodic basis thereafter as may be required or directed by the Board, Respondent, at her own expense, shall have a mental health examination, including psychological assessment and testing as appropriate, to determine her capacity to perform all professional duties with safety to self and to the public. The examination will be performed by a licensed psychiatrist or psychologist appointed by the Board, but not Dr. Nair. Respondent shall provide this evaluator with a copy of the Board's disciplinary order prior to the evaluation, as well as a copy of Dr. Nair's July 2005 report. The examiner must submit a written report of that assessment and recommendations to the Board. Recommendations for cessation of practice

for safety of patients, treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the Respondent. All costs incurred for evaluation and treatment are the responsibility of the Respondent.

Respondent shall execute a release authorizing the evaluator to divulge the aforementioned information to the Board.

20. PSYCHOLOGICAL TREATMENT

Respondent, at her own expense, shall continue to receive psychotherapy and psychiatric treatment for her depression, as long as her mental health care providers believe such is necessary. Her treating psychotherapist and psychiatrist shall immediately notify the Board if he/she does not believe Respondent can safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board. Respondent shall inform her treating mental health providers of this probation (and this term of the probation specifically) and shall cause those professionals to submit a report to the Board each quarter indicating Respondent's progress and prognosis.

Dated: January 26, 2005

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings